

WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

30 APRIL 2015

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
THE WILTSHIRE COUNCIL TEFFONT PATH No. 9 RIGHTS OF WAY MODIFICATION
ORDER 2014

Purpose of Report

1. To:
 - (i) Consider objections received to the making of “The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2014” made under Section 53 of the Wildlife and Countryside Act 1981 (see **Appendix 1** – Order).
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to Council’s Business Plan

2. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council has received two applications for an order to modify the definitive map and statement in respect of Teffont Path No. 9. One application was made in 2005 and the other in 2014. A location plan is appended at Appendix 2 – Location.
4. The Council has a duty to determine these applications which adduce both historical evidence and evidence from users of the way.
5. Teffont Path No. 9 is a long route leading from the Old Dinton Road at Teffont in a northerly direction to join the Ox Drove, byway open to all traffic Teffont Path No. 12. The route is a historic route forming part of a road linking Teffont Magna with Wylve and was recorded in the Mere and Tisbury Rural District Council area definitive map and statement as a bridleway eight feet wide.
6. The evidence adduced by the applicants in both the 2005 and the 2014 applications seeks to show that, on the balance of probability, this record is wrong and that higher rights and a greater width subsist and should be recorded in the definitive map and statement.
7. Evidence of significant weight has been investigated including an Inclosure Award dated 1800 arising out of an agreement between landowners and other interested parties in 1799 and a further Act of Parliament and resultant Inclosure Award dated 1837.

8. A part of the route pre-dated the process of the enclosure of the common lands at Teffont and the enclosure of lands in 1800 and 1837 established the whole of the route as a public road (“Wyly Road”) with defined widths. The road is then consistently recorded in a range of documents including estate maps of the Earl of Pembroke and Montgomery and commercial maps including the Ordnance Survey over a period ranging from 1801 to 1945.
9. The user evidence adduced relates to use of the whole width of the way, including the verges, in the period 1956 to 2014 and can be found at **Appendix 3D**.
10. Officers have investigated the evidence adduced, and some additional historical documents held at the Wiltshire and Swindon History Centre, and consider that on the balance of probabilities, that is, it is more likely than not, that the way should be recorded as a restricted byway with a width of 33 feet for the southern section and 30 feet for the northern section. Details of the evidence and the investigation can be found in the Council’s Decision Report (see **Appendix 3** – Decision Report and Appendices A-D).
11. As a result of this decision an Order (**Appendix 1**) was made and duly advertised. The Order attracted one representation in support and four objections and as a result must now be sent to the Secretary of State for Environment, Food and Rural Affairs for determination through the offices of the Planning Inspectorate.
12. Full details of the representation and four objections are appended at **Appendix 4** along with the case officer’s comments. Some additional evidence was also adduced at this stage and this is presented at the end of **Appendix 4**.
13. Matters such as desirability, need, the environment, health and safety, privacy, security and cost are all irrelevant for the application of s.53 of the Wildlife and Countryside Act 1981 and the matter must be decided on the evidence alone.

Main Considerations for the Council

14. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review. The requirements of this section of the Act are outlined at part 2 (pages 3 to 9) of the decision report attached at **Appendix 3**.
15. The Order is made under Section 53 (3) (c) of the Wildlife and Countryside Act 1981, based on:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

 - (ii) *that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or,*
 - (iii) *that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”*

16. Section 32 of the Highways Act 1980 states:

“32 Evidence of dedication of way as highway

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

17. Evidence is the key and therefore any objections to the making of the Order, must challenge the evidence available to the Surveying Authority. The authority is not able to take into account any other objections such as the suitability of the way for use by the public and environmental impacts.

Safeguarding Considerations

18. Considerations relating to safeguarding anyone affected by the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such Order must be confirmed based on the relevant evidence alone.

Public Health Implications

19. Considerations relating to the public health implications of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Environmental Impact of the Proposal

20. Considerations relating to the environmental impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Equalities Impact of the Proposal

21. Considerations relating to the equalities impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Risk Assessment

22. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council’s attention that there is an error in the definitive map and statement which ought to be investigated; it would be unreasonable for the Council not to seek to address this fact. If the Council fails to pursue this duty, it is liable to complaints being submitted through the Council’s complaints procedure, potentially leading to a complaint to the Ombudsman. Ultimately, a request for judicial review could be made.

Financial Implications

23. The determination of Definitive Map Modification Order applications and the modifying of the definitive map and statement of public rights of way accordingly, are statutory duties for the Council; therefore, the costs of processing such Orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
24. Where objections are made to the making of the Order and not withdrawn, the Order falls to be determined by the Secretary of State and cannot simply be withdrawn. The Order will now be determined by an independent Inspector appointed on behalf of the Secretary of State by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.
25. Where the case is determined by written representations, the costs to the Council are negligible; however, where a local hearing is held, the costs to the Council are estimated at £300 - £500 and a public inquiry could cost between £1,500 and £6,000 if Wiltshire Council supports the Order (i.e. where legal representation is required by the Council) and around £300 - £500 where Wiltshire Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council as the case is presented by the applicant).
26. Where the Council makes an Order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000. Equally the Council may claim its costs from any other party who they deem to have acted in an unreasonable manner.

Legal Implications

27. The determination of an Order, which has received objections, is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State (although the Council would be considered by the Court to be an "interested party" in any such proceedings). There would be no further cost to the Council.

Options Considered

28. Members of the Committee should now consider the evidence received in order to determine whether or not Wiltshire Council continues to support the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the Order has been objected to, therefore the Order must now be submitted to the Secretary of State for determination and Members may determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State. The options available to members having considered the available evidence and the objections received are as follows (please note that the available evidence now includes all submissions made at the formal objection period (please see **Appendix 4**), as well as that considered in the decision report dated 1 December 2014):
 - (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on its consideration of the available evidence, in which case it should recommend that the Order be confirmed without modification.

- (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification based on its consideration of the available evidence, in which case it should recommend that the Order be confirmed with modification.
- (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, on its consideration of the available evidence, in which case it should recommend that the Order is not confirmed.

Reason for Proposal

- 29. The Order has been made on the grounds that there is sufficient evidence for it to be shown, on the balance of probabilities, that Teffont Path No. 9 should be recorded in the definitive map and statement as a restricted byway with widths of 33 feet and 30 feet as detailed in the Order.
- 30. Following the making and advertising of the making of the Order, no further evidence has been submitted which would lead Officers to change this view, please see comments on objections, as set out in **Appendix 4**.

Proposal

- 31. That “The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015”, be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Sally Madgwick

Rights of Way Officer

The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

- Appendix 1 - “The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015”
- Appendix 2 - Location Plan
- Appendix 3 - Decision Report (1 December 2014)
- Appendix 3.A - 1801 Inclosure Consolidation Act Extracts and notes
- Appendix 3.B - 1822 Local Act for Inclosing Lands at Dinton and Teffont Magna
- Appendix 3.C - 1837 Dinton and Teffont Magna Inclosure Award Transcript
- Appendix 3.D - Summary of Witness Evidence
- Appendix 4 - Representation and Objections
- Appendix 5 - 1800 Teffont Magna Inclosure Award Transcript